

BORA LASKIN LAW LIBRARY



3 1761 10083970 3

CASES AND MATERIALS ON TRUSTS
VOLUME ONE: EXPRESS TRUSTS

Fall 1991

J. Phillips and R. Scane, Faculty of Law, University of Toronto. Compiled with the assistance of Lesley Midzain.

These materials are reproduced solely for the use of students in the Faculty of Law, University of Toronto.

1-9
TTS
1991
p. 1

BORA LASKIN LAW LIBRARY

AUG 22 1991

FACULTY OF LAW
UNIVERSITY OF TORONTO

CASES AND MATERIALS ON TRUSTS
VOLUME ONE: EXPRESS TRUSTS

Fall 1991

J. Phillips and R. Scane, Faculty of Law, University of Toronto. Compiled with the assistance of Lesley Midzain.

These materials are reproduced solely for the use of students in the Faculty of Law, University of Toronto.

TABLE OF CONTENTS: VOLUME I

PART I - THE DEVELOPMENT AND NATURE OF THE TRUST

CHAPTER 1 - HISTORICAL INTRODUCTION

D. Brown, 'Historical Perspectives on the Statute of Uses', (1979) 9 Manitoba Law Journal 409.....	1
C. Backhouse, 'Married Women's Property Law in Nineteenth Century Canada', (1988) 6 Law and History Review 211.....	11
G. Alexander, 'The Transformation of Trusts as a Legal Category, 1800-1914', (1987) 5 Law and History Review 303.....	13

CHAPTER 2 - THE TRUST COMPARED TO OTHER LEGAL RELATIONSHIPS - DEBT, CONTRACT, AGENCY

a. Trust and Debt

Hydro Electric Power Commission of Ontario v. Brown (1959), 21 D.L.R. (2d) 551 (Ont. C.A.).....	24
Re Century 21 Brenmore Real Estate Ltd. (1980), 111 D.L.R. (3rd) 280 (Ont. C.A.).....	27
Queen in Right of British Columbia v. Henfrey Samson Belair Ltd. (1989), 59 D.L.R. (4th) 726 (S.C.C.).....	33

b. Trust and Contract

In Re Schebsman, [1944] Ch. 83 (C.A.).....	45
Tobin Tractor 1957 Ltd. v. Western Surety Co. (1963), 40 D.L.R. (2d) 231 (Sask. QB).....	55

c. Trust and Agency

Trident Holdings Ltd. v. Danand Investments Ltd. et al (1988), 64 O.R. (2d) 65 (C.A.).....	63
-----------------------------------------------------------------------------------------------	----

CHAPTER 3 - THE TRUST COMPARED TO OTHER LEGAL RELATIONSHIPS -
EQUITABLE CHARGE AND POWER OF APPOINTMENT

a. Equitable Charge

Re Oliver (1890), 62 L.T. 533 (Ch.).....	71
In Re West, [1900] 1 Ch. 84.....	72
In Re Foord, [1922] 2 Ch. 519.....	75

b. Power of Appointment

Re Weekes' Settlement, [1897] 1 Ch. 289.....	78
Re Lloyd, [1938] 1 D.L.R. 450 (Ont. H.C.).....	82

PART II - THE EXPRESS TRUST

CHAPTER 4 - CERTAINTY OF OBLIGATION AND CERTAINTY OF SUBJECT MATTER

a. Certainty of Intention to Create a Trust

Johnson v. Farney (1913), 29 O.L.R. 233 (C.A.).....	86
Hayman v. Nicoll, [1944] S.C.R. 253.....	89

b. Certainty of Subject Matter - Generally

Palmer v. Simmons (1854), 61 E.R. 704 (Ch.).....	96
Re Beardmore Trusts, [1952] 1 D.L.R. 41 (Ont. H.C.).....	97
Re Walker (1925), 56 O.L.R. 517 (C.A.).....	102
Re Hornell, [1945] O.R. 58 (C.A.).....	104

Re Shamas, [1967] 2 O.R. 275 (C.A.).....	110
Re Armstrong, unreported, S.C. Ont., 22 May 1985.....	114
c. <u>Certainty of Subject Matter - Quantum per Beneficiary</u>	
Re Golay's Will Trusts, [1965] 1 W.L.R. 969 (Ch.).....	123

CHAPTER 5 - CERTAINTY OF BENEFICIARIES - GENERAL

a. <u>Conceptual Uncertainty</u>	
Re Coates, [1955] Ch. 495.....	125
Re Connor (1970), 10 D.L.R. (3d) 5 (Alta. C.A.).....	127
Re Baden's Deed Trusts (No. 2), [1973] 1 Ch. 9 (C.A.).....	130
b. <u>Evidentiary Uncertainty and Administrative Unworkability: Powers and Trusts Distinguished</u>	
Re Gestetner Settlement, [1953] Ch. 672.....	134
Inland Revenue Commissioners v. Broadway Cottages Trust, [1955] Ch. 20 (C.A.).....	139
Re Gulbenkian's Settlement Trusts, [1970] A.C. 508 (H.L.)....	149
McPhail v. Doulton, [1971] A.C. 424 (H.L.).....	153
Re Baden's Deed Trusts (No. 2), [1973] 1 Ch. 9 (C.A.).....	162

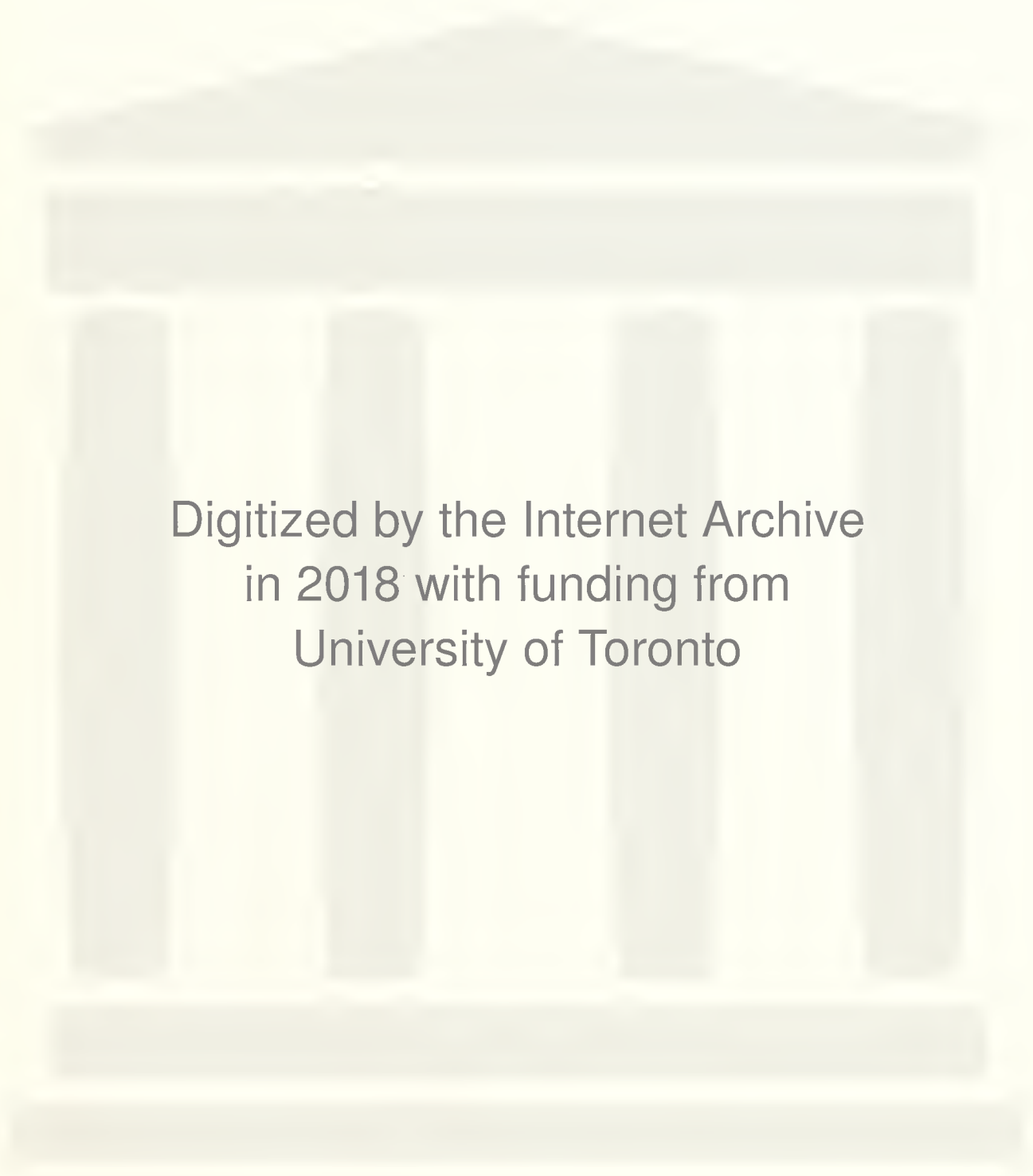
CHAPTER 6 - CERTAINTY OF BENEFICIARIES - THE PROBLEM OF NON-CHARITABLE PURPOSE TRUSTS

a. <u>The General Rule Against Validity</u>	
Re Astor's Settlement Trusts, [1952] Ch. 534.....	169
b. <u>The Modern Trend Towards Validity</u>	
Re Denley's Trusts, [1969] 1 Ch. 373.....	177

In Re Recher's Will Trusts, [1972] 1 Ch. 526.....	180
In Re Lipinski's Will Trusts, [1976] 1 Ch. 235.....	184
c. <u>Statutory Reform</u>	
Perpetuities Act, R.S.O. 1980, c. 374.....	190
<u>Wood and Whitebread v. The Queen in Right of Alberta</u> , [1977] 6 W.W.R. 273 (Alta. S.C.).....	190
O.L.R.C., "Draft Trustee Act", s. 82.....	196
 <u>CHAPTER 7 - THE CONSTITUTION OF THE TRUST</u>	
a. <u>The Maxim that Equity will Not Assist a Volunteer</u>	
Richards v. Delbridge (1874), L.R. 18 Eq. 11.....	197
Carson v. Wilson, [1961] O.R. 113 (C.A.).....	199
Re Rose, [1952] Ch. 499.....	204
b. <u>The Requirements for a Declaration of Trust</u>	
Paul v. Constance, [1977] 1 All E.R. 195 (C.A.).....	212
Re Vandervell's Trusts (No. 2), [1974] Ch. 269 (C.A.).....	215
c. <u>Assigning an Equitable Interest</u>	
Re Wale, [1956] 3 All E.R. 280 (Ch.).....	220
d. <u>An Apparent Exception: The Rule in Strong v. Bird</u>	
Re Freeland, [1952] 1 Ch. 110.....	228
Re Gonin, [1977] 2 All E.R. 720 (Ch.).....	232

CHAPTER 8 - TESTAMENTARY FORMALITIES

<u>Succession Law Reform Act</u> , R.S.O. 1980, c. 488.....	237
Re Beardmore Trusts, [1952] 1 D.L.R. 41 (Ont. H.C.).....	239
Re MacInnes, [1935] S.C.R. 200.....	239
Anderson v. Patton, [1948] 1 D.L.R. 848 (Alta. S.C.); [1948] 2. D.L.R. 202 (C.A.).....	245
McCormick v. Grogan (1869), L.R. 4 H.L. 82.....	251
In Re Boyes (1884), 26 Ch. D. 531.....	258
In Re Keen, [1937] 1 Ch. 236 (C.A.).....	261
Ottaway v. Norman, [1972] Ch. 698.....	268
Re Mihalopolous (1956), 5 D.L.R. (2d) 628 (Alta. S.C.).....	275



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

